# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 7342 of 2005

**For Approval and Signature:**

**THE HON'BLE MR.JUSTICE D.A.MEHTA**
**HON'BLE MS.JUSTICE H.N.DEVANI**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ? |
| 5 | Whether it is to be circulated to the civil judge ? |

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**VASANT MAGANLAL CHOKSHI &3 - Petitioner(s)**

**Versus**

**UNION OF IDNIA &3 - Respondent(s)**

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**Appearance :**

MR DV PARIKH for Petitioner No(s).: 1,2,3.

NOTICE SERVED BY DS for Respondent No(s).: 1,2,3.
MR JITENDRA MALKAN for Respondent No(s).: 1.

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**CORAM :THE HON'BLE MR.JUSTICE D.A.MEHTA**

**HON'BLE MS.JUSTICE H.N.DEVANI**

**Date : 24/06/2005**

## ORAL JUDGMENT
## (Per : THE HON'BLE MR.JUSTICE D.A.MEHTA)

1. This petition seeks a writ, order or direction in the nature of mandamus directing the respondents to return to the petitioners 78 bars of gold weighing 9097.920 grams seized by the respondent authorities under panchnama dated 16th January 1998 from the business premises at Surat.
2. Heard Mr.Devan Parikh, the learned advocate for the petitioner and Mr.Jitendra Malkan for the respondents. Rule returnable today. Mr.Malkan waives service of rule, and by consent of the learned advocates, the matter is taken up for hearing and final disposal.
3. It is the case of the petitioner that, in the course of its business as dealer in gold and gold ornaments, they make purchases of gold on a regular basis from various persons under cover of bills and the payment is made by cheques. On 16th January 1998, respondent No.3 accompanied by other officials of the Department of Revenue Intelligence (DRI) visited the premises of thepetitioners and on the ground that 78 bars of gold weighing 9097.920 grams valued at Rs.37,05,000/- were illegally imported and as the petitioners were not importers, the gold was seized / confiscated and penalty was duly imposed.
4. Upon issuance of show cause notice, the petitioner tendered its explanation supported by various evidences. The Commissioner (Customs) was satisfied that, out of 78 bars of gold, there was sufficient evidence to explain acquisition of 70 bars of gold and accordingly, directed that the said 70 bars of gold should be returned to the petitioners. This order was made on 23rdJanuary 2003. However, in relation to balance 8 bars, the show cause notice was upheld.
5. The petitioner preferred appeal against the order of retention of 8 bars including confiscation and penalty before CESTAT. The Tribunal, for the reasons stated in its order dated 30th June 2004, allowed the appeal holding that there was no linkage of the seized gold bars with any smuggled gold.
6. The petitioners accordingly called upon the respondent authorities to return the 78 gold bars pursuant to the orders made by the adjudicating authority and CESTAT

in favour of the petitioners. Finding that there was no response from the respondent authorities despite various requests, this petition has been preferred.

7. Mr.Malkan on behalf of the respondents placed reliance on the affidavit in reply sworn by one Shri N.Y.Phadatare, Assistant Commissioner (Legal), HQ, Customs House, Ahmedabad, on 16th June 2005, to contend that the Commissioner has granted permission under Section 129D of the Act to challenge the order of adjudicating authority before CESTAT and appeal has already been filed, and further that the order of CESTAT is being challenged and appeal shall be filed within a short time. He, however, fairly submitted that, against the order of Commissioner in the appeal filed before CESTAT, the Tribunal has not granted any stay and insofar as the order of CESTAT qua balance bars are concerned, the appeal is yet to be filed.
8. In light of the aforesaid factual position it is not necessary to deal with detailed submissions of either side for the simple reason that the controversy stands concluded by reported decision of this Court in the case of Shyam Textile Mills v. Union of India, 2005 (67) RLT 488 (Guj.). The said was a case of granting of refund and availing of deemed credit wherein in almost similar circumstances, the revenue authorities were refusing to allow availing of credit lying to the credit of the petitioner in deemed credit register despite the petitioner therein having succeeded before the Commissioner (Appeals). The Court has also taken cognizance of the fact that despite pendency of appeal before the Tribunal, no stay was granted in favour of the Department regarding operation of the order of Commissioner (Appeals). Applying the ratio and analogy of the said decision, the petitioner is required to be granted the relief prayed for, considering the admitted position on facts that the order of Commissioner against which appeal has been filed by the Department before the Tribunal, has not been stayed, and further the fact that the order of CESTAT rendered in assessee's appeal has also not been stayed by any higher forum in absence of any appeal having been filed as on date.
9. In the result, the petition is allowed and the respondent authorities are directed to return to the petitioners 78 bars of gold weighing 9097.920 grams seized on 16th January 1998 within a period of ten working days from today i.e. on or before 8th July 2005. Rule made absolute. Costs payable by the respondents are quantified at Rs.1,500/-.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

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